

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

MA PATRICIA MENA MORALES,)
)
Plaintiff,)
)
v.) Case No. _____
)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
)
_____)

COMPLAINT

Plaintiff, Ma Patricia Mena Morales, by counsel, and by way of her complaint against the Defendant, United States of America, alleges and states:

THE PARTIES

1. Ma Patricia Mena Morales ("Plaintiff") is the Plaintiff herein and alleges medical malpractice as described in detail below.
2. On May 21, 2019, Plaintiff underwent a blood draw at Heart City Health in Elkhart, Indiana. Heart City is a Health Center Program grantee under 42 U.S.C. 254b, and therefore Heart City and its staff are deemed by the United States Department of Health and Human Services, Health Resources and Services Administration, to be Public Health Service employees under 42 U.S.C. 233 (g)-(n), and therefore the proper Defendant is the United States of America.

3. The Defendant, the United States of America, will be served through the United States Attorney General, Department of Justice, 10th and Pennsylvania Avenue, N.W., Washington, DC 20530, and through the United States Attorney, Civil-Process Clerk, at the office of the United States attorney for the district in which the action is being brought.

JURISDICTION AND VENUE

4. This action arises under the Federal Tort Claims Act, 28 U.S.C.A. § 2671 *et seq.* This court is vested with jurisdiction pursuant to 28 U.S.C.A. § 1336(b).

5. Prior to the filing of this action, Plaintiff filed her claims with the United States Department of Health and Human Services office of the general counsel as required by 28 U.S.C.A. § 2675, on April 26, 2021. A true and accurate copy of the Tort Claim Notice is attached hereto as Exhibit A.

6. Plaintiff's claim is deemed denied by lack of response from the United States Department of Health and Human Services within six (6) months, or as of October 26, 2021.

7. Plaintiff is therefore entitled to file suit against the United States of America in accordance of 28 U.S.C.A. § 2675.

8. Venue, including divisional venue, is proper in this district pursuant to 28 U.S.C.A. § 1402(b) and N.D. Ind. L.R. 3-1.

GENERAL ALLEGATIONS RELATING TO MALPRACTICE

9. The Plaintiff, at all relevant times, resided in Elkhart County, Indiana.

10. On May 21, 2019, Plaintiff sought medical care and treatment and underwent a blood draw at Heart City Health Center ("Heart City") in Elkhart, Indiana.

11. The Heart City staff are deemed federal employees for purposes of a medical malpractice claim.

12. The Heart City staff provided its medical care and treatment to Plaintiff, at all relevant times, within the scope of their employment following the creation of a physician-patient relationship.

13. In rendering care and treatment to Ma Patricia Morales, Heart City's professional health care practitioners were obligated to comply with the standards of care that apply to practitioners of their field, practice and/or specialty.

14. One of Heart City's professional health care practitioners, believed to be a nurse or technician, performed a blood draw on Plaintiff's left arm on or about May 21, 2019.

15. On knowledge and belief, that blood draw was performed under the direction and guidance of Nurse Practitioner Panford.

16. The nurse or the technician performing the blood draw appeared to be annoyed or frustrated that she had been instructed to perform the blood draw, and while performing the blood draw she acted as though she was in a hurry.

17. The nurse or the technician performing the blood draw struggled to locate a vein with the needle and began probing, including making side to side movements with the needle until the vein was located.

18. Plaintiff experienced immediate pain and communicated that pain to those present.

19. The area of the puncture immediately began to swell to roughly the size of a golf ball under her skin and she experienced bruising and increasing pain and numbness from her fingers to the top of her shoulder.

20. Nurse Practitioner Panford identified a probable nerve injury that day and recorded the same in Plaintiff's medical records.

21. Plaintiff was given a prescription of gabapentin for the neural pain and was sent home.

22. On May 24, 2019, Plaintiff returned to Heart City with continuing problems in her left arm, including probable neural pain and weakness. Because of the likely nerve injury, Heart City directed Plaintiff to see Dr. Vidic, a neurologist at the Elkhart Clinic.

23. Following her consultation with Dr. Vidic, Heart City falsely advised Plaintiff that Dr. Vidic concluded that her injury was not related to the May 21, 2019, blood draw.

24. Heart City failed to comply with the applicable standards of care in the following respects:

- a. Failing to draw blood from the appropriate site;
- b. Failing to properly insert the needle;
- b. Improperly probing for the vein with the needle;
- c. Failing to provide adequate follow-up care; and
- d. Misrepresenting the contents of medical records.

25. As a result of the negligence of Heart City's professional health care practitioners, the Plaintiff sustained a serious and permanent injury including, but not limited to, permanent nerve damage, a result of which she suffers from and will continue to suffer from, including constant pain, weakness, difficulty gripping and picking up items, limited ability to care for her disabled child, and loss of enjoyment of life.

26. As a further proximate result of this medical negligence, the Plaintiff has incurred and may continue to incur medical expenses and other damages in the future.

WHEREFORE, Plaintiff requests judgment in her favor for an amount to fairly compensate her for her harms and losses, and all further and proper relief.

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